

LAW OFFICES  
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ENTERED  
Office of Proceedings

APR 26 2010

Part of  
Public Record

April 26, 2010

Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, SW  
Washington, DC 20423

VIA ELECTRONIC FILING

Re: STB Finance Docket No. 35141  
U S Rail Corporation - Construction and Operation Exemption -  
Brookhaven Rail Terminal

226895

And

STB Finance Docket No. 35036  
Suffolk & Southern Rail Road LLC-Lease and Operation Exemption-Sills  
Road Realty, LLC

226894

Dear Ms. Brown,

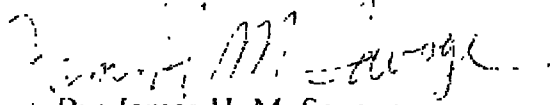
Please accept this letter supplementing the joint letter petition filed April 23, 2010 in behalf of U S Rail Corporation ("U S Rail") and the Town of Brookhaven ("Brookhaven" or "the Town") to provide the Stipulation of Settlement ("So Ordered Stipulation") entered April 22, 2010 in the U S District Court for the Eastern District of New York which document operates as the parties' agreement to resolve the Brookhaven Rail Terminal litigation. The parties submit same as an exhibit in support of their joint petition to vacate the Cease and Desist Order imposed by the Board's October 12, 2007 Decision in the related matter of Suffolk

& Southern Rail Road LLC-Lease and Operation Exemption-Sills Road Realty, LLC, STB Finance Docket No. 35036.

Mark Cuthbertson, attorney for the Town of Brookhaven has reviewed this letter and has approved its contents.

We thank the Board for its time and consideration.

Very truly yours,  
John D. Herfner, PLLC

  
By: James H. M. Savage  
Of counsel

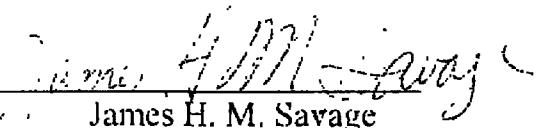
Attorneys for Petitioner  
U S Rail Corporation

Att.

cc: Mark D. Cuthbertson (via electronic mail w/att.)  
Robert Ryback (via First Class mail w/att.)  
Thomas Stilling (via electronic mail w/att.)

### CERTIFICATION OF SERVICE

I, James H. M. Savage, an attorney-at-law of the District of Columbia, certify that I have served this day by electronic mail a true copy of the within pleading upon counsel for the Town of Brookhaven and by first class mail upon the New York State Department of Transportation.

  
James H. M. Savage

Dated: April 27, 2010

DF

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

SILLS ROAD REALTY, LLC, U S RAIL CORPORATION,  
WATRAL BROTHERS, INC., PRATT BROTHERS, INC.,  
ADJO CONTRACTING CORP. and  
SUFFOLK & SOUTHERN RAIL ROAD LLC,

Plaintiffs,

v.

THE TOWN OF BROOKHAVEN,

Defendant.

**SO-ORDERED  
STIPULATION**

Index No. 07 CV 4584  
(TCP) (ETB)

WHEREAS, Plaintiffs, Sils Road Realty, LLC ("SRR"), U S Rail Corporation ("U.S. Rail"), Watral Brothers, Inc., Pratt Brothers, Inc., ADJO Contracting Corp., and Suffolk & Southern Rail Road LLC (collectively "Plaintiffs"), commenced this action seeking declaratory relief declaring that defendant the Town of Brookhaven, ("Town" or "Defendant") is pre-empted by federal law from interfering with the construction and operation of a rail terminal located on Sils Road in Yaphank, New York (hereinafter "Project" or "Rail Terminal") on a 28 acre property owned by SRR ("Property"). Plaintiffs also sought declaratory and injunctive relief against Defendant to prohibit it from: (i) prosecuting appearance tickets issued by Defendant to Plaintiffs (the "Appearance Tickets") and declaring the Appearance Tickets to be null and void; and (ii) taking any other action that interferes with Plaintiffs' construction or operation of the Rail Terminal. Plaintiffs also sought damages from the Town pursuant to 42 U.S.C. §§

1983 and 1985 for violations of their civil rights and seek damages for malicious prosecution under the Court's supplemental jurisdiction; and

**WHEREAS**, Plaintiffs filed an application, brought on by Order To Show Cause, seeking to preliminarily enjoin Defendant from: (i) taking any action to prosecute the Appearance Tickets issued by the Defendant on October 4, 2007, against the Plaintiffs in connection with the construction and operation of the Rail Terminal, (ii) issuing any additional Appearance Tickets to Plaintiffs in connection with the construction and operation of the Rail Terminal; and (iii) taking any other action to interfere with or obstruct the construction and operation of the Rail Terminal; and

**WHEREAS**, an evidentiary hearing was held on Plaintiff's motion for a preliminary injunction on December 5-6, 2007 before Magistrate Judge E. Thomas Boyle; and

**WHEREAS**, after consideration of post-hearing submissions by the parties, Magistrate Judge E. Thomas Boyle issued a Report and Recommendations ("R&R") dated July 18, 2008, in which he recommended that Plaintiffs' motion for a preliminary injunction be denied; and

**WHEREAS**, Plaintiffs filed objections to the R&R and Defendant filed opposition to Plaintiffs' objections; and

**WHEREAS**, the Plaintiffs and Defendant (collectively, the "Parties") are in receipt of a decision, dated June 30, 2009, from United States District Judge Thomas C. Platt adopting the R&R and denying the Plaintiffs' request for preliminary injunctive relief; and

**WHEREAS**, the Town has taken an adversarial posture with respect to a petition ("Petition") submitted by US Rail to the United States Surface Transportation Board ("STB") for Exemption under the 49 U.S.C. 10502 from the requirements of 49 U.S.C. 10901, which Petition is currently pending under Finance Docket No. 35141( the "STB Proceeding"); and

**WHEREAS** the Parties, based on the terms set forth below, desire to settle the above-captioned matter that is pending in the United States District Court for the Eastern District and to have the Town withdraw its objections to, and resolve all disputes regarding, the STB Proceeding and to resolve all local proceedings;

**NOW THEREFORE**, in consideration of the mutual promises and undertakings contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties, hereto, wishing to settle the above captioned matter and resolve all disputes relating to the STB Proceeding and the local proceedings, intending to be legally bound, hereby agree as follows:

1. Without prejudicing any arguments previously advanced and/or pleaded by the Parties and reserving same, the Parties agree that the purposes of this Stipulation are to further the Town's objective to have the Project designed and constructed consistent with the Reference Site Plan and the Applicable Standards, each as defined in paragraph 2 below, and to further the Plaintiffs' objective to construct and operate the Project and the terms of this Stipulation shall be construed henceforth to effectuate these purposes.

2. The Parties agree that the Project will be constructed consistent with the site plan (the "Reference Site Plan") set forth in Attachment A, the Applicable Standards

and the other requirements of this Stipulation. For the purposes of this Stipulation, "Applicable Standards" means (i) those provisions of the Town Code of the Town of Brookhaven and the Code of Suffolk County set forth in the Reference Site Plan and (ii) all applicable federal standards. In the event of any conflict between or among the Reference Site Plan, the Applicable Standards or the other requirements of this Stipulation, the Reference Site Plan shall control. The Parties further agree that this Stipulation shall constitute full site plan review and approval of the Reference Site Plan for all purposes of New York State and local law. No additional approval of the Town or any agency or department thereof shall be required to construct or operate the Project as contemplated by the Reference Site Plan unless, as set forth in paragraph 10 below, the Project is found not to be subject to STB jurisdiction. The Plaintiffs will engage the services of Sidney B. Bowne & Son, LLP ("Bowne"), 235 East Jericho Turnpike, Mineola, New York 11501 or other firm of licensed professional engineers chosen by the Plaintiffs (together with Bowne, the "Engineers") to prepare and provide to the Town (a) during construction, engineering drawings relating to construction of the various phases of the Project prior to commencing construction of each such phase and (b) upon completion of construction, record plans for the Project. The Engineers will also prepare and provide to the Town (a) during construction, bi-monthly documentation to evidence the fact that the Engineers have inspected the Project and its certification that all site improvements on the Property covered in such report are in accordance with the Reference Site Plan and the Applicable Standards and (b) upon completion of construction, written certification that all site improvements constructed on the Property are in accordance with the Reference Site Plan and the Applicable Standards, including,

but not limited to, the setback and vegetation requirements set forth in the Reference Site Plan. The Engineers' costs and expenses in providing such services shall be paid for by the Plaintiffs.

3. In addition to Applicable Standards, the Project will be constructed consistent with Suffolk County Department of Public Works standards, if any, with respect to the re-grading of any County rights of way adjoining the Property, installation of retaining wall footings within such rights of way, installation and/or modification of the existing traffic signal and the granting of reasonable easements for future traffic signal maintenance.

4. To assist the Town in its construction of public improvements, the Plaintiffs, other than US Rail, shall collectively pay to the Town the sum of One Million & 00/100 (\$1,000,000.00) Dollars, payable in one installment of Two Hundred Thousand & 00/100 Dollars (\$200,000.00) payable on March 1, 2011 and in nine installments of Eighty-eight Thousand, Eight Hundred, Eighty-eight and 00/100 Dollars (\$88,888.88), payable on each January 1 thereafter, to pay a portion of the cost of such improvements.

5. The Project must comply in all regards with whatever mitigation and/or conditions are imposed by the STB inclusive of any mitigation and/or conditions resulting from any NEPA review in the STB Proceeding.

6. Plaintiffs agree that, in the event the Project receives STB approval, operations at the Property shall not include the collection, sorting, separation, processing (including, but not limited to, baling, crushing, compacting and shredding), incineration, treatment, management, disposal, transport or transfer of solid waste and construction and demolition debris unless required under federal law or regulations. The term solid waste



shall mean "solid waste" as defined in Section 1004 of the Solid Waste Disposal Act, 42 USC 6903. Plaintiffs warrant and represent that neither they nor any of their respective affiliates, subsidiaries, successors or assigns shall make any application for permits to allow the activities prohibited by this paragraph, including but not limited to an application for a land-use exemption under 49 U.S.C. 10908 and 10909, and shall not petition or otherwise apply to the STB to have the Project or Property declared to be a solid waste rail transfer facility, without the prior consent of the Town. To the extent any of the foregoing is required under federal law and regulation, and further to the extent legally permissible, Plaintiffs, shall pay to the Town a fee in the amounts set forth on Attachment B for each ton of daily landfill cover, construction and demolition debris and incinerator ash ("Commodities") transported from the Property. Within five business days following the end of each calendar month after commencement of rail operations at the Property, Plaintiffs shall provide the Town with copies, certified, under penalty of perjury, as accurate and complete by an authorized officer of US Rail, of all records relating to shipments, if any, of Commodities during the preceding month, including records of the rail cars and or containers in which such Commodities were shipped. The Town shall have the right to periodically, but no more than quarterly or such shorter interval, but not less than 60 days, as the Town may determine, review US Rail's records regarding shipments of Commodities to determine the tonnage thereof being shipped. Every ninety (90) days the parties shall reconcile the amounts of Commodities shipped in the preceding ninety (90) days, and Plaintiffs shall pay semiannually, on each January 1 and July 1, any fee then due to the Town.

7. To secure the payment obligations under Paragraph 6, Plaintiffs shall, within thirty (30) days of the commencement of rail terminal operations at the Property, furnish a security bond or, if such Plaintiffs are unable to secure such bond, a letter of credit in the amount of: (a) for the first year of commercial operation, One Million Dollars (\$1,000,000.00) and (b), for each subsequent year, the greater of (i) One Million Dollars (\$1,000,000) and (ii) one hundred ten percent (110%) of the aggregate fees payable to the Town under Paragraph 6 above for the preceding year (the "Surety"), and shall thereafter maintain the same in full force and effect. Upon any breach of such Plaintiffs' payment obligations, the Town shall have the right to make a claim against the Surety. Once such a claim is made, such Plaintiffs shall increase the amount of the Surety as required by the Town, to a maximum of Three Million (\$3,000,000.00) Dollars in the aggregate.

8. Upon execution of this Stipulation, the Town will (i) move to dismiss all outstanding Appearance Tickets with prejudice, (ii) withdraw all existing "stop work" orders relating to the Property, (iii) permit Plaintiffs, subject to the prior approval of the New York State Department of Environmental Conservation and amending of the October 12, 2007 STB Cease and Desist Order to permit the resumption of pre-construction activity including excavation and grading as well as non-rail site work, consistent with the requirements of the phasing plan with accompanying milestone / deliverable list attached hereto as Attachment E and (iv) execute and deliver a letter, in the form of Attachment F hereto, to the STB withdrawing the Town's opposition to the Project and requesting expedited consideration by the STB of the Petition.

9. Upon execution of this Stipulation, the Town will commence and diligently pursue appropriate proceedings to abandon all of its right, title and interest in and to all mapped streets lying within the boundaries of the Property and consent to the grading, in accordance with the Reference Site Plan, of the mapped street known as Bellport Avenue adjoining the Property, to the extent that such grading is legally permissible.

10. Simultaneous with the execution of this Stipulation, Plaintiffs will execute and deliver the covenants and restrictions with respect to the setbacks and vegetation requirements reflected in the Reference Site Plan and the commitments set forth in paragraph 6 above attached hereto as Attachment C and Plaintiffs and Defendant will execute and deliver the mutual releases attached hereto as Attachment D.

11. In the event of a final, unappealable determination in the STB Proceeding that the Project is not subject to STB jurisdiction, the Plaintiffs acknowledge that construction of the Project will be subject to all applicable State and local rules and regulations.

12. "Effective Date" of this Stipulation is hereby defined as the date Defendant's attorney notifies counsel for Plaintiffs that Defendant has authorized its counsel, by Town Board resolution or other action, to execute this Stipulation of Settlement and the attached Stipulation of Discontinuance.

13. All notices hereunder shall be transmitted via facsimile to the fax numbers designated below for each counsel and additionally shall be transmitted by first class mail to each counsel.

14. The Court shall retain jurisdiction to resolve any dispute under this Stipulation and to enforce any of the provisions herein.

15. This Stipulation may not be changed or modified except by the execution of a writing signed by all of the Parties.

16. This Stipulation is intended to, and shall, bind and inure to the benefit of the Plaintiffs, Defendants and their respective successors, assigns, heirs and legal representatives.

17. All counsel represent that they are authorized to enter into this Stipulation on behalf of the clients for whom they have appeared, and to bind such parties to the provisions hereof, subject only to the terms hereof.

18. This Stipulation may be executed in counterparts and by facsimile, and shall be binding upon all Parties and their counsel when so executed, provided that any Party or counsel executing a copy hereof by facsimile agrees to provide all others with duplicate original counterparts within three (3) business days thereafter.

19. This Stipulation constitutes the entire agreement and understanding between the Parties with respect to the matters contained herein, and there are no prior oral or written promises, representations, warranties, conditions, provisions, or terms related thereto other than those set forth in this Stipulation. The Parties further represent and acknowledge that, in entering into this Stipulation; they do not rely upon and have not relied upon any representations or statements (beyond those contained in this Stipulation).

20. This Stipulation shall be construed in accordance with the laws of the State of New York without regard to its conflicts of laws principles.

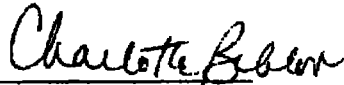
21. This Stipulation is a compromise of disputed claims and has been entered into to avoid the time, expense, uncertainty, and inconvenience of contested litigation. This Stipulation does not constitute an adjudication or finding on the merits of any of the Parties' allegations.

22. The Parties hereto participated jointly in the preparation of this Stipulation and each Party has had the opportunity to review, comment upon and redraft this Stipulation. Accordingly, it is agreed that no rule of construction shall apply against any Party or in favor of any Party and any uncertainty and ambiguity shall not be interpreted against any Party in favor of the other.

23. The Parties shall cooperate to effectuate the purposes of this Stipulation and shall execute reasonable and customary documents and take reasonable and customary actions that may be necessary or appropriate to give full force and effect to the terms of this Stipulation.


FARRELL FRITZ, P.C.

By:

  
Charlotte A. Biblow, Esq.  
Aaron E. Zerykier, Esq.  
*Attorneys for Plaintiffs*  
1320 RexCorp Plaza  
Uniondale, NY 11556-1320  
Tel: (516) 227-0700  
Fax: (516) 227-0777  
[cbiblow@farrellfritz.com](mailto:cbiblow@farrellfritz.com)  
[azerykier@farrellfritz.com](mailto:azerykier@farrellfritz.com)

LAW OFFICES OF MARK CUTHBERTSON

By:

  
Mark A. Cuthbertson, Esq.  
Jessica P. Driscoll, Esq.  
*Attorneys for Defendant*  
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Tel: (631) 351-3501  
Fax: (631) 614-4314  
[mcuthbertson@cuthbertsonlaw.com](mailto:mcuthbertson@cuthbertsonlaw.com)  
[jdriscoll@cuthbertsonlaw.com](mailto:jdriscoll@cuthbertsonlaw.com)

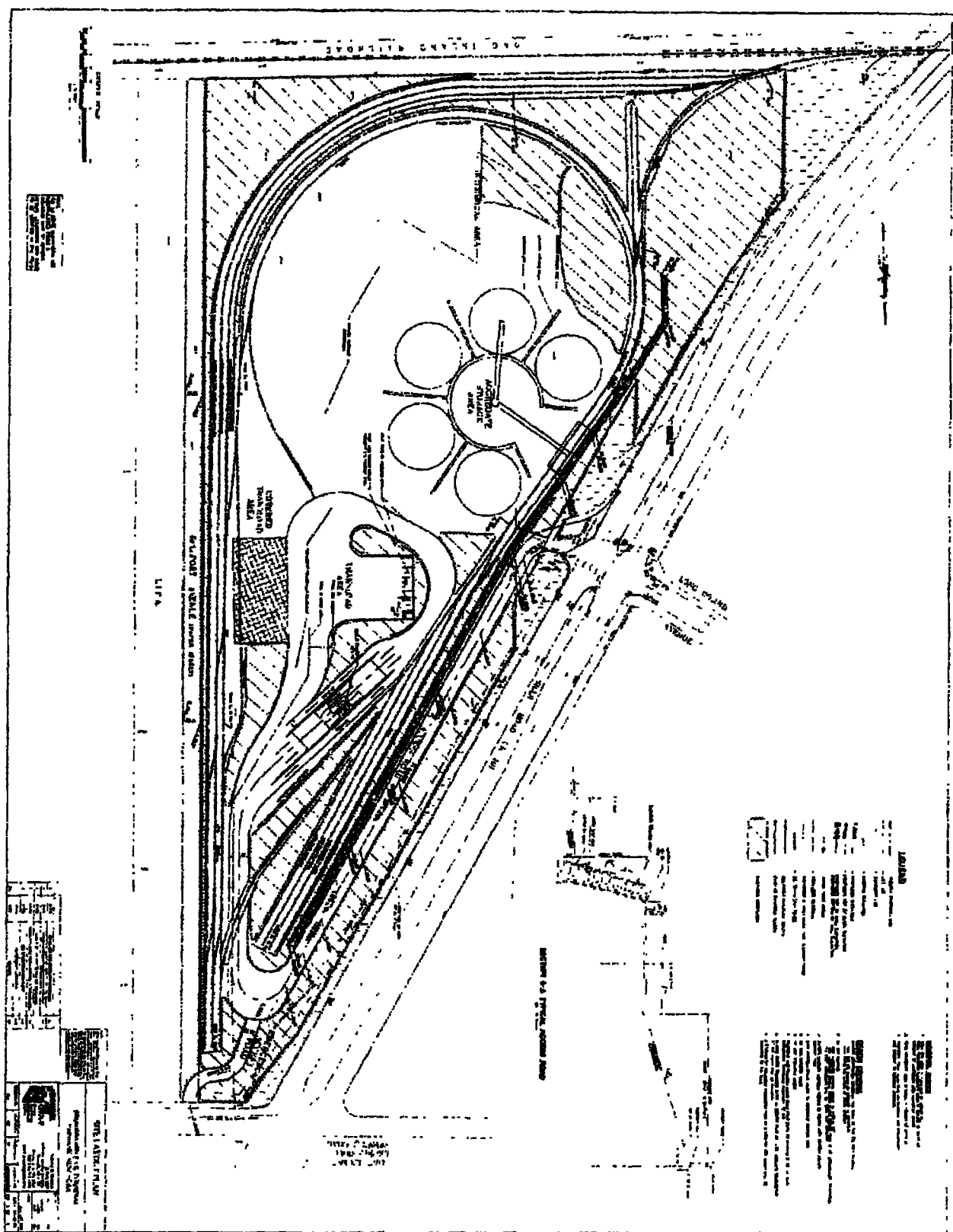
SO-ORDERED:

Hon. Thomas C. Platt  
United States District Judge

  
Date

**ATTACHMENT A**

**Reference Site Plan**



**ATTACHMENT B**

**Processed or Unprocessed Daily Landfill Cover**

**Surcharge/Ton  
\$ 7.60**

**Construction and Demolition Debris  
(C&D)**

**Surcharge/Ton  
\$17.84**

**Resource Recovery Facility and/or Incinerator Residue (Ash)  
Surcharge/Ton  
\$19.60**



**DECLARATION OF COVENANTS AND RESTRICTIONS**

THIS DECLARATION, made this \_\_\_\_ day of April, 2010, by SILLS ROAD REALTY, LLC, a New York limited liability company with offices located at 485 Underhill Boulevard, Suite 203, Syosset, New York (hereinafter referred to as the "DECLARANT").

**WITNESSETH**

**WHEREAS**, DECLARANT and the Town of Brookhaven entered into the So-Ordered Stipulation, Index No. 07 CV 4584 (TCP) (ETB), ("Stipulation");

**WHEREAS**, the Town Board of Town of Brookhaven, pursuant to the Stipulation, has agreed not to interfere with the construction and operation of a rail terminal located at Sills Road in Yaphank, New York on a 28 acre property now owned by the DECLARANT (the "Property"), subject to the filing of certain covenants and restrictions upon the subject property by the DECLARANT; and

**WHEREAS**, the Property is identified on the Suffolk County Tax Map as Section 663.00, Block 03.00, Lots 01.000, 27.001 to 27.004; Section 704, Block 04.00, Lots 001.00 and 002.00; Section 704, Block 05.00, Lots 001.00 and 002.00; and Section 704, Block 02.00; Lots 002.000, 001.001, 030.000 to 036.000 and is more particularly described as set forth in Exhibit "A" attached hereto.

1. Operations at the Property shall not include the collection, sorting, separation, processing (including, but not limited to, baling, crushing, compacting and shredding), incineration, treatment, management, disposal, transport or transfer of solid waste and construction and demolition debris unless required under federal law or regulations. The term solid waste shall mean "solid waste" as defined in

Section 1004 of the Solid Waste Disposal Act, 42 USC 6903. In addition, no application shall be made for permits to allow the aforementioned prohibited activities, including but not limited to an application for a land-use exemption under 49 U.S.C. 10908 and 10909, nor shall DECLARANT or any of its affiliates, subsidiaries, successors or assigns petition or otherwise apply to the Surface Transportation Board of the United States of America to have the Property declared to be a solid waste transfer facility, without the prior consent of the Town of Brookhaven. To the extent any of the foregoing is required under federal law and regulation, and further to the extent legally permissible, DECLARANT shall pay to the Town a fee in the amounts set forth on Exhibit "B" for each ton of daily landfill cover, construction and demolition debris and incinerator ash transported from the Property. Within five business days following the end of each calendar month after commencement of rail operations at the Property, Plaintiffs shall provide the Town with copies, certified, under penalty of perjury, as accurate and complete by an authorized officer of US Rail, of all records relating to shipments, if any, of Commodities during the preceding month, including records of the rail cars and or containers in which such Commodities were shipped. The Town shall have the right to periodically, but no more than quarterly, review US Rail's records regarding shipments of construction and demolition debris and incinerator ash to determine the tonnage of such materials being shipped. Every ninety (90) days the parties shall reconcile the amounts of Commodities shipped in the preceding ninety (90) days, and

Plaintiffs shall pay semiannually, on each January 1 and July 1, any fee then due to the Town.

2. DECLARANT, its successors and assigns shall maintain the setbacks and landscape coverage set forth in the Site Plan annexed hereto as Exhibit "C", including a landscape area of 367,216 square feet on the Property, which is an amount equal to thirty (30%) percent of the total square footage of 1,223,205 square feet.
3. The Property described in Exhibit "A" shall hereinafter and forever be held, sold and conveyed subject to the covenants and restrictions recited herein which shall run with the land and shall be binding upon the DECLARANT, its successors and assigns and shall inure to the benefit of, and be enforceable by the Town of Brookhaven.
4. If any one or more of the provisions of this Declaration shall deemed or declared to be invalid or otherwise unenforceable, such determination shall in no manner affect the validity of the remaining provisions hereof and those remaining provisions shall remain in full force and effect.
5. The failure to enforce any of the provisions hereof shall not be deemed a waiver of the right to do so as to any continuing or subsequent violation.
6. If the DECLARANT its heirs, successors, or assignees shall violate or attempt to violate any of the covenants herein, it shall be lawful for the Town of Brookhaven to prosecute any proceedings at law or in equity against the persons or entities violating or attempting to violate any such covenants either to prevent said

violation and/or to recover damages or other relief for such violation.

**IN WITNESS WHEREOF**, the DECLARANT above-named has executed the foregoing Declaration the day and year first above written.

**SILLS ROAD REALTY, LLC**, a New York  
limited liability company

By: Suffolk & Southern Railroad LLC,  
its Managing Member

By: \_\_\_\_\_  
Name: Andrew Kaufman  
Title: President

STATE OF NEW YORK     )  
                                      ) ss.:  
COUNTY OF SUFFOLK    )

On the \_\_\_\_ day of April in the year 2010 before me, the undersigned, personally appeared Andrew Kaufman, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

**EXHIBIT A**

ALL that certain plot, piece or parcel of land, situate, lying and being at Yaphank, Town of Brookhaven, County of Suffolk and State of New York bounded and described as follows:

BEGINNING at a point on the southerly side of Long Island Expressway (New York State Route 495; south service road) where same is intersected by the southeasterly side of Sills Road

RUNNING THENCE along the southerly side of said Long Island Expressway the following two (2) courses and distances:

- (1) North 84 degrees 06 minutes 52 seconds East, 71.07 feet;
- (2) Along the arc of a curve bearing to the left having a radius of 1030.00 feet a distance of 16.15 feet to the westerly side of Bellport Avenue (not open);

THENCE along the westerly side of Bellport Avenue South 05 degrees 50 minutes 33 seconds East, 1931.62 feet to the northerly side of land of the Long Island Rail Road;

THENCE along said last mentioned land, South 82 degrees 58 minutes 07 seconds West, 1079.92 feet;

THENCE North 05 degrees 10 minutes 04 seconds West, 245.33 feet to the southeasterly side of Sills Road;

THENCE along said last mentioned road the following two (2) courses and distances:

- (1) Along the arc of a curve bearing to the left having a radius of 2939.79 feet a distance of 330.72 feet;
- (2) North 23 degrees 04 minutes 16 seconds East, 198.72 feet;

THENCE South 05 degrees 32 minutes 19 seconds East, 104.42 feet to a Right of Way taking line;

THENCE North 23 degrees 04 minutes 16 seconds East, 336.66 feet to a monument found;

THENCE South 77 degrees 04 minutes 31 seconds East, 39.81 feet;

THENCE North 23 degrees 04 minutes 16 seconds East, 74.82 feet;

THENCE North 89 degrees 52 minutes 37 seconds West, 15.06 feet;

THENCE North 05 degrees 33 minutes 18 seconds West, 156.55 feet to the southeasterly side

of Sills Road;

THENCE along the southeasterly side of Sills Road the following two (2) courses and distances:

- (1) North 23 degrees 04 minutes 16 seconds East, 836.37 feet;  
Along the arc of a curve bearing to the left having a radius of 982.00 feet a distance of 151.99 feet to the southerly side of the Long Island Expressway at the point or place of

BEGINNING.



**EXHIBIT B**

**Processed or Unprocessed Daily Landfill Cover**

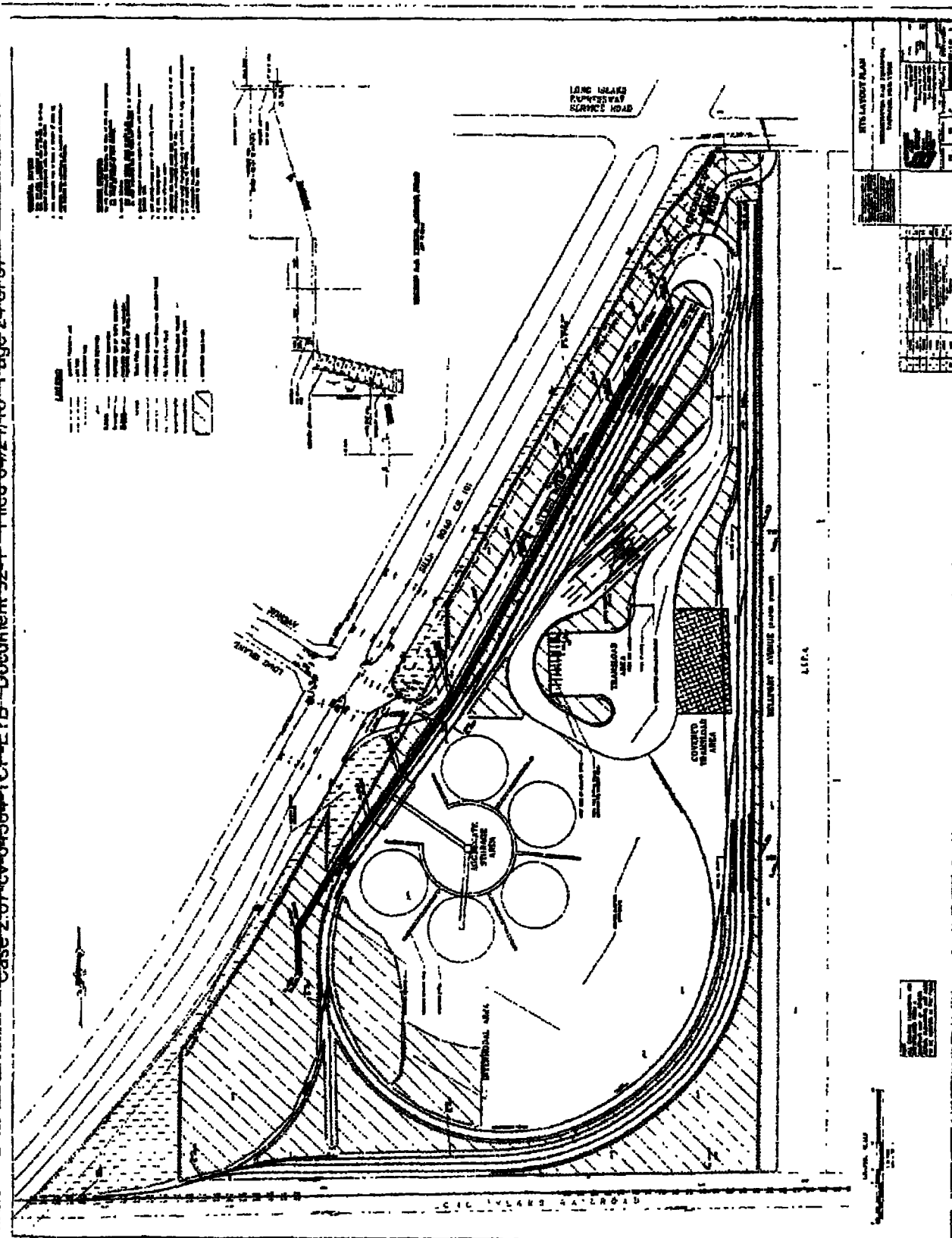
**Surcharge/Ton  
\$ 7.60**

**Construction and Demolition Debris  
(C&D)**

**Surcharge/Ton  
\$17.84**

**Resource Recovery Facility and/or Incinerator Residue (Ash)  
Surcharge/Ton  
\$19.60**

**EXHIBIT C**



**ATTACHMENT D**

**Form of Releases**

***TO ALL TO WHOM THESE PRESENTS SHALL COME OR MAY  
CONCERN,  
KNOW THAT***

**SILLS ROAD REALTY, LLC, U S RAIL CORPORATION,  
WATRAL BROTHERS, INC., PRATT BROTHERS, INC.,  
ADJO CONTRACTING CORP. and  
SUFFOLK & SOUTHERN RAIL ROAD LLC,**

**as**

**RELEASORS,**

in consideration of the sum of ten dollar(s) (\$10.00), and other good and valuable  
consideration,  
received from

**THE TOWN OF BROOKHAVEN**

**as**

**RELEASEE,**

receipt whereof is hereby acknowledged, releases and discharges

the RELEASEE, RELEASEE'S heirs, executors, administrators, successors and assigns from  
all actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds,  
bills, specialties, covenants, contracts, controversies, agreements, promises, variances,  
trespasses, damages, judgments, extents, executions, claims, and demands whatsoever, in  
law, admiralty or equity, which against the RELEASEE, the RELEASORS, RELEASORS'  
heirs, executors, administrators, successors and assigns ever had, now have or hereafter can,  
shall or may, have for, upon, or by reason of any matter, cause or thing whatsoever from the  
beginning of the world to the day of the date of this RELEASE.

The words "RELEASOR" and "RELEASEE" include all releasors and all releasees  
under this RELEASE.

This RELEASE may not be changed orally.

**[SIGNATURE PAGE TO FOLLOW]**

*In Witness Whereof*, each RELEASOR has hereunto set their hand and seal on the \_\_\_\_\_ day of March, 2010.

**SILLS ROAD REALTY, LLC**, New York  
limited liability company

By: Suffolk & Southern Railroad LLC,  
its Managing Member

By: \_\_\_\_\_  
Name: Andrew Kaufman  
Title: President

**U S RAIL CORPORATION**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**WATRAL BROTHERS, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**PRATT BROTHERS, INC.,**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ADJO CONTRACTING CORP.**

By: \_\_\_\_\_

Name:

Title

**SUFFOLK & SOUTHERN RAIL ROAD**

**LLC,**

By: \_\_\_\_\_

Name:

Title

State of New York )

) ss.:

County of )

On March \_\_\_\_ 2010 before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

State of New York )

) ss.:

County of )

On March \_\_\_\_ 2010 before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

State of New York )

) ss.:

County of \_\_\_\_\_ )

On March \_\_\_\_ 2010 before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

State of New York )

) ss.:

County of \_\_\_\_\_ )

On March \_\_\_\_ 2010 before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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Notary Public

State of New York )

) ss.:

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\_\_\_\_\_  
Notary Public

State of New York     )

) ss.:

County of             )

On March \_\_\_\_ 2010 before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public



***TO ALL TO WHOM THESE PRESENTS SHALL COME OR MAY  
CONCERN,  
KNOW THAT***

**THE TOWN OF BROOKHAVEN**

as

**RELEASORS,**

in consideration of the sum of ten dollar(s) (\$10.00), and other good and valuable consideration,  
received from

**SILLS ROAD REALTY, LLC, U S RAIL CORPORATION,  
WATRAL BROTHERS, INC., PRATT BROTHERS, INC.,  
ADJO CONTRACTING CORP. and  
SUFFOLK & SOUTHERN RAIL ROAD LLC**

as

**RELEASEES,**

receipt whereof is hereby acknowledged, releases and discharges

the RELEASEES, RELEASEES' heirs, executors, administrators, successors and assigns from all actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, and demands whatsoever, in law, admiralty or equity, which against the RELEASEES, the RELEASOR, RELEASOR'S heirs, executors, administrators, successors and assigns ever had, now have or hereafter can, shall or may, have for, upon, or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of this RELEASE.

The words "RELEASOR" and "RELEASEE" include all releasors and all releasees under this RELEASE.

This RELEASE may not be changed orally.

**[SIGNATURE PAGE TO FOLLOW]**

*In Witness Whereof*, the RELEASOR has hereunto set RELEASOR'S hand and seal  
on the \_\_\_\_\_ day of March, 2010.

**THE TOWN OF BROOKHAVEN**

By: \_\_\_\_\_

Name:

Title:

State of New York )

) ss.:

County of )

On March \_\_\_\_ 2010 before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

## **ATTACHMENT E**

### **Phasing Plan**

#### **PHASE I:**

- Prior to the start of any "pre-construction" excavation or any site work, any and all Cease and Desist Orders issued by the Surface Transportation Board ("STB") must be amended to permit the resumption of pre-construction activity including excavation and grading as well as non-rail site work. A copy of such decision or amendment shall be provided to the Town before any pre-construction, excavation or related site work occurs.
- The STB has previously determined that non-rail construction and preliminary site work are within the regulatory purview of the Town. Prior to the start of the "pre-construction" site work ("Work") outlined in the attached phasing plan ("Phasing Plan"), Sills Road Realty shall obtain approval from NYSDEC as required by Paragraph 8 of the proposed Stipulation of Settlement ("Stipulation Agreement").
- Upon receipt by the Town of Brookhaven ("Town") of the STB decision or amendment lifting all Cease and Desist Orders and approval from NYSDEC the Town shall issue a Notice to Commence Work in accordance with the terms and conditions set forth in the Stipulation Agreement.
- Sills Road Realty shall continue to cooperate with, and provide all requested assistance to, the Surface Transportation Board's Section of Environmental Analysis ("SEA") in SEA's completion of an Environmental Analysis ("EA") of the project.
- Within 60 calendar days of commencement of the Work, Sills Road Realty shall have delivered on site railroad ties, ballast stone and track required to complete site track construction relating to Phase I of the Phasing Plan and 50% of the required railroad ties and track required for Phase II of the Phasing Plan. The Project Engineer, Sidney B. Bowne & Son, LLP ("Bowne") shall inventory and confirm in writing to the Town, within 10 days after final delivery of above specified material, that all required material has been delivered to the Project Site.
- Prior to the start of the Work, Sills Road Realty shall provide the Town with a copy of the engineering retainer agreement with Bowne. The retainer agreement shall reflect the services that are contemplated in Paragraph 2 of the Stipulation Agreement.

- Within 60 calendar days of execution of the Stipulation Agreement, Sills Road Realty shall through its engineer, Bowne, submit 60% complete site grading and drainage drawings, which will represent not less than 25% of the complete engineering drawings related to the construction of the project.
- Within 90 calendar days of the execution of the Stipulation Agreement, SEA shall issue the proposed EA for public comment ("Comment Period"). In the event that the SEA fails to issue the EA for public comment, all work shall immediately cease until such time that the SEA issues the proposed EA for public comment.
- Under Phase I, Sills Road Realty is permitted to excavate up to 75,852 cubic yard of material in compliance with the Phasing Plan. In the event that Sills Road Realty fails to meet any of the above dates for the deliverables all work shall immediately cease until such time that compliance is achieved.

**PHASE II:**

- All items listed in Phase I must be completed to the Town's satisfaction prior to commencement of Phase II.
- The STB must issue a decision accepting and / or adopting the EA and SEA's conditions prior to the commencement of Phase II.
- Within 60 calendar days of commencement of Phase II work, Sills Road Realty shall have delivered on site the remaining balance of railroad ties and track required to complete site track construction relating to Phase II of the Phasing Plan. The Project Engineer, Bowne, shall inventory and confirm in writing to the Town, within 10 days after final delivery of the above specified material, that all required material has been delivered to the Project Site.
- Sills Road Realty must provide the Town with satisfactory proof of compliance with all SEA conditions, in any, applicable to the project which can be reasonably complied with during Phase II of the Phasing Plan prior to resuming any excavation or site work.
- Provided the above conditions are met, the Work may continue whereby Sills Road Realty shall be permitted to excavate up to an additional 91,852 cubic yard of material in compliance with the Phasing Plan.
- During Phase II, construction of precast concrete open-faced retaining walls backfilled with earth and planted with drought-resistant plantings, as shown on the Site Plan, shall commence and continue to the extent practicable in light of the requirements of the Phasing Plan and sound engineering practices.

**PHASE III:**

- No further Work shall occur until such time as the Surface Transportation Board has issued its decision to permit construction of the project.
- Upon such approval, all work to complete the project may resume in compliance with the Reference Site Plan set forth in the Stipulation Agreement.

**ATTACHMENT F**

**Form of STB Letter**



**Town of Brookhaven  
Long Island**

26757

**Mark Lesko, Supervisor**

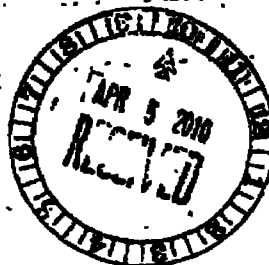
ENTERED  
Office of Proceedings

APR 05 2010

Part of  
Public Record

March 30, 2010

Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, SW  
Washington, DC 20423



Re: STB Finance Docket No. 35141 U S Rail Corporation -  
Construction and Operation Exemption - Brookhaven Rail Terminal

Dear Ms. Brown,

Pursuant to the settlement agreement concluded between the parties and approved by the Town Board at a public meeting on March 23, 2010, the Town of Brookhaven ("Brookhaven") hereby withdraws its opposition to the Brookhaven Rail Terminal project ("the Project").

Brookhaven joins with Petitioner in respectfully requesting the Board to restore this matter to its active docket, and, in view of the substantial passage of time since the filing of this matter, to afford the proceeding expedited consideration.

Brookhaven believes that the changes to the Project plans incorporated by the Petitioner at the Town's request, as well as the other matters covered by the settlement agreement, adequately address the concerns raised by the Town at an earlier stage of this proceeding.

The Petitioner has made the representations set forth in the following paragraph and if these representations are true the Project will have beneficial impacts.

The Project will have a strong positive economic impact upon the Town. Local jobs will be created on-site. Potentially significant economic synergy exists as a result of the Project's location, ideally situated adjacent to and between the major East-West highway and rail thoroughfares transecting Long Island. Significant reduction in long haul truck traffic of aggregate commodities such as stone will result from the introduction of a suitable capacity

The following pending motions by Brookhaven are hereby being withdrawn: Motion to Compel Discovery, filed October 13, 2008; and, Motion to Strike, filed January 19, 2010.

Office of the Supervisor  
One Independence Hill • Farmingville • NY 11738 • Phone (631) 451-9100 • Fax (631) 451-6677  
[www.brookhaven.org](http://www.brookhaven.org)

Printed on recycled paper

Page 2

3/30/10

C. Brown

Re: STB Finance Docket No. 35141 U S Rail Corporation -

Construction and Operation Exemption - Brookhaven Rail Terminal

truck-train transload terminal in Eastern Long Island, more than 60 miles east of the heavily congested highway bridges connecting Long Island to New York, New Jersey and New England. Other local businesses may benefit from the availability of nearby rail freight transportation facilities. Local truck traffic not destined for Brookhaven will have immediate access to the Long Island Expressway and will consequently not have to make extensive use of local roads. The Project site is located in an industrial zone not near to any sensitive receptors such as schools, hospitals, or senior living facilities.

We thank the Board for affording the parties the opportunity to resolve their differences, and in particular thank the mediator, Thomas Stilling, for his assistance in facilitating the amicable resolution of this matter.

Sincerely,

  
Mark Legato  
Supervisor

cc: Sills Road Realty  
Robert F. Quinlan, Town Attorney